Daily Chronicle

City Directory.

KNIGHTS OF HONOR.

RELIEF LODGE, No. 163, K. of H.—Meets first and third Thursday nights of each month at Teutonia Hall, corner Church and Gay Streets.
W. W. Leftwich, H D; Emile George, Reporter.

U. O. G. C.

PEACE COMMANDERY, No. 1, United Order of the Golden Cross, meet every Tuesday night at Temperance Hall. D. H. Weaver, C. R; A. Brown, R. of R.

F. & A. M.

MAXWELL LODGE, NO. 433—Stated Communication upon first Thursday night of each month at Hall on Broad street.
D H Weaver, Sec'y. L. H. Rogan, W M.

ORIENTAL LODGE, NO. 453—Stated Communication upon second Thursday night of each month at Hall in Masonic Temple.
H J Squire, Sec'y N S Woodward, W.M.

MASTER'S LODGE, NO. 244—Stated Communication upon third Monday night of each month at Hall in Masonic Temple
E E McCroskey, Sec.y, H M Aiken, W M.

PEARL CHAPTER, NO. 44, R. A. M.—Stated Convocation upon first Monday night of each month at Hall in Masonic Temple.
S J Todd, Sec'y. W. A. Galbraith, H P.

COEUR de LION COMMANDERY, NO. 9.—Stated Conclave upon second Monday night of each month. Meetings for drill upon Friday night of each week at Hall in Masonic Temple.
Ste J Todd, Rec'r H M Aiken, E C

ZABUD COUNCIL NO. 59, R. and S. M.—Stated Assembly upon fourth Monday night of each month in Hall at Masonic Temple.
E. Dolli, Rec'r, N S Woodward, Thr. Ill. M.

I. O. O. F.

EAST TENNESSEE LODGE, No. 34—Meets Tuesday nights, at Odd Fellows' Hall, west side, Market square. D W Lewis, Jr. N G; C J Mynatt, V G; E W Adkins, R S; W H Salmon, Perm't Sec; Jno S Warters, Treasurer.

SATURDAY, NOV. 9, 1878.

GAINS AND LOSES.

From all that we can gather up to the present time, the next House of Representatives will stand about 140 Republicans, 146 Democrats and 7 Greenbackers. Further returns may change these figures slightly.

There are 38 Republicans in the present Senate, 37 Democrats and 1 Independent—Judge Davis, of Illinois. In the next Senate the Republicans will lose a Senator from each of the following States: North Carolina, Florida, Mississippi, Arkansas, Ohio, Oregon and California—7. They will gain one in Connecticut. The Senate, after the 4th of next March, will then stand: Democrats 42, Republicans 33, Independents 1. Judge Davis may be counted upon to act with the Democrats on all important political questions, which will give them a majority of ten. This may be varied somewhat by fuller returns, but not much. Both Houses will be Democratic, but not by majorities large enough to pass measures over the veto of the President.

THE RESULT IN NEW YORK.

No party can prosper and be victorious long at a time when it is rent by internal dissensions. A house divided against itself can not stand, as is demonstrated by a Scriptural declaration and by experience as old as civilization itself. He who aspires to be a party leader, only to gratify personal pique and avenge personal grievances, is the worst enemy his party has to contend with, and ought not to be trusted. For some time past the Republican party of New York has been rent in twain in the face of its powerful and well organized foe. One class of Republicans have made war upon Senator Conkling, and charged that with the aid of the Custom House in New York city he has manipulated the politics of the State in his own personal interest. He and his friends were only human, and retaliated in a manner not always complimentary to his foes. The result has been a continued feud in the party ranks and defeat at every election.

At the commencement of the canvass just closed, confronted by the inflation Democracy in various States of the Union, which threatened the financial welfare of the nation in so formidable a manner, these divisions were healed. The anti-Conkling faction ceased to make war upon Mr. Conkling, and the ranks closed up for a grand charge all along the line. The result is before us. The Republican State ticket is elected by fifteen to twenty thousand, and they have gained five Republican Congressmen. This is a substantial victory, and shows what the Republicans of that State may do when they are united. The lesson is one by which Republicans everywhere may profit.

For this splendid victory, much credit is due to the grand efforts of Mr. Conkling himself. His speeches were able, bold and convincing, and seemed to arouse enthusiasm in his party, which brought out a full vote. He looms up as one of the foremost and most successful political leaders in the country, and will doubtless become a formidable candidate for a place on the Presidential ticket in 1880. His hold on the people of New York is strong, and without New York the Democrats can not elect a President. If the Republicans of that State hold the ground they have so gallantly occupied in the campaign just closed, and gather the fruits of their splendid victory, the result of the Presidential election two years hence must prove favorable to the Republicans.

DEMOCRACY AND THE GREENBACK FALLACY.

There is no doubt about the Democratic leaders being in trouble at the manner in which they have gone whoring after the Greenback gods. The Washington correspondent of the Baltimore *Sun* comments on the result of Tuesday's election as follows:

"After the emphatic manner in which the people have spoken, the anti-resumption party in the present House can not feel encouraged in pursuing any further the system of financial tactics with which they disturbed and unsettled business interests during the entire period of the last session. The lesson of yesterday to the Democratic party is so plain that he who runs may read. If that party desires to enter on the next Presidential canvass with any hope of success its leaders everywhere can not be too soon in every State back on the platform of the sound financial doctrines where it stood for so many years and where it properly belongs. During this entire Congressional campaign scarcely a word has been spoken from the stump by the Democratic leaders in favor of the time-honored financial principles of their party. Of all the Democratic Senators Bayard, of Delaware, Whyte, of Maryland, and Eaton, of Connecticut, are the only ones who have given forth no uncertain sounds on the question of honest money. Even Senator Kernan, of New York, has dallied with the subject, as if afraid to commit himself. Now that the greenback furore has proved itself to be such a will-o'-the-wisp, Democratic Presidential candidates in embryo and seekers after the suffrages of the people generally may no longer be afraid to advocate that which is right and denounce that which is wrong. There never was a more prodigious care than this greenback one, and the shrewdest politicians of both parties confess that they have been much disappointed to find how comparatively trifling a hold it really had upon the people. Only three weeks ago one of the most experienced and sagacious of the political writers of New York came here, and after surveying the situation predicted that the hard money men in the next House would scarcely number one-third of that body. The greenback campaign was conducted on the Chinese plan, with great beating of tom-toms, and the result is similar to that of a Chinese campaign. In Republican circles to-day the feeling as to the next Presidential campaign is one of enthusiasm, which contrasts strongly with the despondency which has heretofore been exhibited. The cry that 'Grant and honest money' are sure to win is re-echoed with much confidence, and among those who talk this way are some of the most bitter opponents in his own party that General Grant had during his administration. The 'solid South' will be another Republican argument, and prominent members of the party were lamenting the election of a Republican Representative from Maryland, as they said 'it would be a big thing for us if there was not a solitary Republican elected from Maryland to Texas.' There is no doubt that Mr. Blaine's speech at Philadelphia, on Saturday night last foreshadows one part of the Republican campaign for the Presidency. The changes will be rung on the 'solid South' for the next two years, and every effort made to revive the old sectional animosity which has been dying out. If this helps to bring about a 'solid North' the object sought for will be attained. There is imminent danger that there will be a 'solid North' if the Democratic party does not, as said above, hasten through its leaders to put itself right on the finance."

SUPREME COURT OPINIONS.

[Reported for the Chronicle by F. A. Reeve, Esq.]

PER HEISKELL, S. J.

Moses vs. the Ocoee Bank.—1. For a *bonus* of $30,000, the Branner Brothers and B. F. McFarland purchased the charter of the Ocoee Bank at Cleveland, and organized the bank at Knoxville. The charter required stock to be paid in gold or silver, or in notes or bills which the corporators might deem equivalent to, or better, than specie. The stock of the old company was regarded as newly subscribed to the new, and they treated their own notes endorsed by each other as in compliance with the terms of the charter. Under this view, they deposited their own notes to the amount of fifty thousand dollars as a payment of stock, and as a further payment deposited forty thousand dollars in notes of the East Tenn. and Va. Railroad Company, eight thousand eight hundred dollars in a draft on the Dandridge Bank, and twelve hundred dollars in coin, making one-half of the capital stock which was to be two hundred thousand dollars, and upon these assets as paid up stock, they proceeded to conduct the business of the bank. The minutes nowhere show any formal call of stock upon which a defaulting subscriber could have been sued by the bank. *Held*, that this mode of transacting banking business can have no countenance in a court of justice. Such notes as were accepted in payment of the stock were not the kind authorized by a fair construction of the charter, and can not be regarded as payments; but will be held as valid obligations for the protection of the note-holders and creditors, enforceable by decree in the case. Meanwhile, the stock will be regarded as unsatisfied and subsisting independently, until actual payment of, or a decree for, the amount of said notes.

2. The ordinary incidents belonging to notes must attach to these notes, and they will bear interest and be subject to the statute of limitation, to run from their maturity.

(In this case, however, the statute of limitation was arrested by the filing of the amended bill, except as to the administrator of Wm. A. Branner, who had died, and the endorsers against whom recovery was not sought till the filing of the cross bill by the trustees, after the expiration of six years.)

3. Where the suit against the personal representative of a stockholder on such a note is barred, his estate will be held liable, without interest, for his subscribed stock remaining unpaid and uncalled and so not due, and must pay equally with those who are liable on their notes.

4. If interest-bearing stock notes are paid by one set of stockholders with interest, they may call upon other stockholders who have paid nothing, and have not given notes for a payment equal in amount to theirs, for a sum equal to the principal and interest so paid.

5. Where the names of endorsers on notes for stock are concealed from the noteholders of the bank who are actively seeking their remedy in a court of equity, the statute of limitations would not be allowed to defeat their recovery, if by amendment relief be sought on that ground.

6. No difficulty seen in the way of holding the directors of a bank who conduct business on the basis of notes not authorized by the charter, *personally* liable to the note holders and creditors, for the whole amount of so-called paid up capital. The directors accepting such securities instead of coin, would each be liable for the whole amount so accepted in breach of his faith to the public. Subsequent directors would be liable upon the same ground. And for a stronger reason would the directors be liable, if they suffered the securities, however inferior to that to which the creditors were entitled to look for protection, to be barred by the statute. And the same liability would attach to negligent trustees, under similar circumstances.

7. No actual subscription to stock necessary to hold the stockholders liable, if the minutes of the proceedings, to which they have access, show the amount taken by each.

8. In the absence of a clause in a bank charter, authorizing a reduction of the capital stock to which it has been raised under a discretionary power to increase it, it would seem that no such power is conferred.

9. Although as between the stockholders and trustees who have carried out their wishes and executed the trust according to their policy and intent, the question of compensation may not fairly arise, yet as a matter of public policy it may be refused, and is, under the facts of this case.

10. An officer of a bank buying in property at execution sale for the bank debt, for which it was sold, and immediately paying to the bank the amount of his bid, might, perhaps, claim the benefit of the purchase for himself, but it would be otherwise where he used the debt for a time to pay his bid, and then, without any corporate action to ratify the transaction, settled the debt with the bank.

11. The case of *Marr vs. the Bank of West Tennessee, Jackson*, 187—, holding that in the adjustment of equities between the stockholders, those who had paid stock in notes of the bank, should be allowed only what they paid for the notes, is adhered to and followed, but not approbated. The Special Judge in criticism of that case, says: "Individually, I am unable to answer the position of the Chancellor (Cooper), or to see any ground for holding, that a stockholder or director, is not, as between himself and the co-stockholders or directors, at liberty to buy up the notes with his own means, and present them for payment at their face value. If he is entrusted by the bank with means to buy them up, of course good faith to the corporation would preclude him from charging more than he paid; and if the question were between him and a note-holder from whom he had purchased at a discount, the rule of *uberrima fides* would apply, but I do not see, that directors are under any trust obligation to buy up notes of a bank of which they are directors, or to divide with others the profits of their purchase, if made. It seems to me to be dealing outside of the mutual trust."

12. Complainant's counsel fees are not a charge upon the fund recovered in a case of this kind, according to the settled principles in this State.

But for the prosecution of the bill and amended bill, and for valuable services rendered in the general litigation, counsel should be paid out of the aggregate recovery, all petitioning creditors contributing *pro rata*.

PER M'FARLAND, J

Chandler vs. the State.—1. Where a collector of taxes collects penalties under a law afterwards declared unconstitutional and void, he and his sureties are estopped to deny the validity of the collection, and he can not refuse to pay over the money.

2. The same principle applies where the law under which the collection was made, has been repealed, though he and his sureties would not be liable if he had failed to collect taxes unlawfully assessed.

3. Under the *Code* § 732, Comptroller's statement of the collector's account is *prima facie* correct, and is conclusive in the absence of countervailing proof.

Wilson vs. the State.—1. The Chairman of the County Court has no power to accept a conditional bond, or conditional delivery.

2. The *Act of* 1875, *ch.* 102, *sec*, 6, requires sureties to appear in open court and acknowledge in writing their willingness to remain liable for the defaults of their principal; but their assent to the change of the law, if necessary at all, might well be given in any other mode equivalent to a common law bond or obligation, and they would be bound thereby, especially in view of *sections* 773 *and* 774 *of the Code.*

PER COOPER, J.

Osborne vs. Royer.—1. An agreement, embodied in a note for land, which constitutes the note a lien on the land by a sufficient description to identify it, is such an equitable lien between the parties as will pass with the note.

2. The *dictum* of Judge McKinney in *Eskridge vs. McClure*, 2 *Yer.*, 84, discussed and discriminated.

Henley vs. Cleiborne.—Where an appeal is granted upon the party giving bond as required by law, the clerk has no power to accept the pauper oath in place of the bond.

Prigmore vs. E. T., V. & G. R. R. Co.—Where issue is joined on a plea of the statute of limitations, the burden of proof is on the plaintiff to show that the cause of action occurred within the period of limitation.

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